



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 12844326

Date: DEC. 31, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a gymnastics athlete and performer, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner has a qualifying one-time achievement (a major, internationally recognized award), or that he meets at least three of the ten alternate evidentiary criteria for this classification. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation

at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is a gymnastics athlete who competed for [redacted] in [redacted] competitions between 2007 and 2015. Since 2016, he has worked for [redacted] as a tumbling performer in its [redacted] and [redacted] shows.

The Director found that the Petitioner did not establish that he received a major, internationally recognized award under the regulation at 8 C.F.R. § 204.5(h)(3), and therefore must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In denying the petition, the Director determined that the Petitioner satisfied only one of the initial evidentiary criteria, relating to high salary at 8 C.F.R. § 204.5(h)(3)(ix). The Director acknowledged the Petitioner's claim that he met the criteria related to lesser internationally recognized awards and prizes at 8 C.F.R. § 204.5(h)(3)(i) and membership in an association that requires outstanding achievements at 8 C.F.R. § 204.4(h)(3)(ii). However, the Director concluded that the evidence did not demonstrate that he meets these criteria.

On appeal, the Petitioner maintains that he has received multiple major, internationally recognized awards in the sport of gymnastics and can satisfy the initial evidence requirement based on these awards alone. The Petitioner further claims that he meets three of the alternate evidentiary criteria and is otherwise qualified for classification as an individual of extraordinary ability.

After reviewing all the evidence in the record, we conclude that the Petitioner has not established that he received a major, internationally recognized award or that he satisfies the requirements of at least three criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

A. One-time Achievement

The record demonstrates that the Petitioner has been the recipient of: (1) two gold medals (individual and men's team competition) at the 2007 [redacted] World Championship; (2) a gold

medal (men's team competition) at the 2015 [redacted] World Championships; (3) a bronze medal at the 2011 [redacted] World Championships; (4) a gold medal at the 2009 [redacted] World Games; and (5) multiple gold medals in [redacted] World Cup events between 2007 and 2009. The Petitioner claims that his gold medals from the World Games and World Championships are his "most important accomplishments" and contends that the Director erred in failing to recognize any of these awards as major, internationally recognized awards consistent with 8 C.F.R. § 204.5(h)(3).

The evidence establishes that the World Championships and World Games competitions in which the Petitioner participated are officially recognized by the international governing body of the sport of gymnastics (International Gymnastics Federation or FIG). The evidence also demonstrates that [redacted] unlike several other gymnastic disciplines, is not an Olympic sport, and that the World Championships and World Games represent the highest level of international competition in [redacted]. In determining that the Petitioner did not establish that his gold medal finishes at these events constitute qualifying one-time achievements, the Director emphasized that his achievements "are not Olympic awards."

On appeal, the Petitioner emphasizes that since [redacted] is not an Olympic sport, an Olympic medal "is not an applicable example of a major international award in [his] field of expertise." The Petitioner argues that, since many athletes are not eligible to compete in the Olympics based on their field, an Olympic medal should not be the only example of a qualifying one-time achievement in athletics.

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "[s]uch evidence shall include evidence of a one-time achievement (that is, a major internal[ly] recognized award)." While the regulation does not identify any specific qualifying award, the House Report specifically cited to the Nobel Prize as an example of a one-time achievement. *See* H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. We have consistently recognized other examples of a one-time achievement including the Pulitzer Prize, an Academy Award, and an Olympic medal. Further, we must look to Congress' intent that "admission under this category is to be reserved for that small percentage of individuals who have risen to the very top of their field of endeavor." *Id.* Thus, consistent with legislative history, a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards.

We note that the selection of Nobel Laureates, the example provided by Congress indicated above, is reported in the top media internationally regardless of the nationality of the awardees, reflects a familiar name to the public at large, and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be global in scope and internationally recognized, not just acknowledged within the field as its highest award.

We acknowledge that the Petitioner submitted several major media articles about the World Games and [redacted] world championships, but this evidence does not demonstrate that medals achieved at these games are accorded the same recognition associated with a one-time achievement or major, internationally recognized award. In fact, some the articles indicate the World Games' lesser recognition or standing. For example, an article published by *PRI* (pri.org) about the 2009 World Games refers to the competition as "an obscure sporting event run under the patronage of the Olympic

Committee but featuring non-Olympic sports” and notes that the World Games’ motto “The World is Watching,” was “clearly an overstatement or wishful thinking – no U.S. broadcaster picked up the games.” The evidence demonstrates that CNN.com published an article about the opening of the 2009 World Games, while BBC.com published a brief preview of the 2019 [REDACTED] World Championships held in [REDACTED]. However, the submitted media articles do not indicate that individual medal winners at these international tumbling events receive broad, significant recognition commensurate with that received by winners of Nobel Prizes, Olympic medals, Academy Awards or other major internationally recognized awards. Moreover, the Petitioner did not establish that these international events are recognized by the general public at a similar level.

Therefore, while the Petitioner has won the top award in [REDACTED] he did not establish that receipt of such an award necessarily qualifies as a one-time achievement, nor can we determine that the top award in any field qualifies as a one-time achievement. The fact that a major, internationally recognized award, such as an Olympic medal, may not exist in a particular field does not mean that we should diminish the impressive nature of the one-time achievement and accept a lesser award. In cases where an individual cannot obtain a one-time achievement, including instances where it is not available in a field, he or she “can also qualify on the basis of a career of acclaimed work in the field” by satisfying three of the ten categories of evidence. *See* H.R. Rep. at 59 and 8 C.F.R. § 204.5(h)(3). Moreover, awards that may be internationally recognized in the field do not necessarily demonstrate that they are also major or consistent with one-time achievements. In those instances, the regulation at 8 C.F.R. § 204.5(h)(3)(i) allows for an individual to submit lesser internationally recognized awards for excellence in the field.

For the reasons discussed, we conclude that the Petitioner has not established that he has received a major, internationally recognized award.

B. Evidentiary Criteria

Because the Petitioner has not established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i). As noted, the Petitioner claims that he has submitted evidence to satisfy the criteria related to lesser nationally recognized awards, membership in an organization that requires outstanding achievements, and high salary. *See* 8 C.F.R. § 204.5(h)(3)(i), (ii) and (ix).

Documentation of the individual’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

As discussed, the record establishes that the Petitioner has received gold medals at the World Championships, World Games and World Cup events in [REDACTED], and that these events are sanctioned by FIG, the international governing body of the sport of gymnastics. The Director determined that the Petitioner submitted insufficient evidence of his receipt of these awards and did not demonstrate that they are internationally recognized awards for excellence in his field. Further, the Director found that, since the Petitioner is currently employed “as a circus performer,” his achievements as an athletic gymnast “have no probative value for this criterion.”

We conclude that the Petitioner has satisfied this criterion and withdraw the Director's determination. The Petitioner sufficiently documented his receipt of the above-referenced awards by providing official results from these competitions as well as his athlete profile on the FIG website. He also provided evidence to establish that the awards are internationally recognized in the sport of gymnastics.

With respect to the Director's conclusion that the Petitioner's athletic achievements have "no probative value," we note that the Petitioner's role with [redacted] is that of a '[redacted]'. A letter from [redacted] confirms that this organization recruited him after its talent scouts saw his athletic performance at the 2015 [redacted] World Championship. His employer states that it relies on his athletic abilities "to execute some of the most complex [redacted] routines" in its shows. This evidence demonstrates a clear nexus between the Petitioner's athletic skills as a gymnast in the [redacted] and his role as a performer in the [redacted] and a transitional relationship between the two. Accordingly, we disagree with the Director's conclusion that his achievements as an athlete have "no probative value" given his current role as a [redacted] performer.

Documentation of the individual's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.
8 C.F.R. § 204.5(h)(3)(ii)

The Petitioner asserts that he meets this criterion as a former member of the [redacted] National [redacted] Team. A petitioner's participation as a member of a national team may demonstrate eligibility for this criterion, as such teams typically limit their number of members and have a rigorous selection process. It is the Petitioner's burden, however, to demonstrate that he meets every element of a given criterion. We will not assume that every "national team" is sufficiently exclusive and requires outstanding achievements of its members as judged by recognized national or international experts in their fields or disciplines.

Here, the Petitioner provided a letter from [redacted] of the [redacted] Federation of [redacted] which he describes as "the national governing body for the disciplines of [redacted] [redacted] confirms that the Petitioner was a member of the [redacted] National [redacted] Team from November 2007 until December 2012 and from January 2015 until December 2015. With respect to the team membership requirements, he states:

In order to be including in the [redacted] National [redacted] Team an athlete must, at a minimum be a national champion in at least one program. In order to maintain his or her membership in the [redacted] National [redacted] Team, an athlete must continue placing first at national championships.

[The Petitioner] received several top place awards at [redacted] Championships and Cups and he is a multiple-time national champion and gold medalist. These awards secured his membership in the [redacted] National [redacted] Team.

[redacted] also identifies members of the panel of judges at "the [redacted] National [redacted] Championship where [the Petitioner] competed, secured first places and as a result earned membership

in the [] National [] Team,” noting that they are “nationally and internationally recognized experts.” He suggests that USCIS review their profiles on the federation’s website.

The Petitioner submitted two additional letters from U.S.-based gymnastics coaches not associated with the [] Federation of [] [] of the World Olympic Gymnastics Academy states that the Petitioner “secured his place in the National Team when he won gold medals at national championships and cups” and therefore “selection to the [] National [] Team is a clear indication of having attained ‘outstanding achievements’ in the field.” Similarly, [] of the Olympic [] Academy states that the Russian national team “is comprised of athletes of top achievements, who in order to qualify for national membership, must at the minimum be national champions.”

On appeal, the Petitioner asserts that the Director did not properly weigh these letters or acknowledge that membership on the [] National [] Team requires outstanding achievements of its members by only accepting national champions in the sport. We note that the Director stated that “[r]equirements that only include employment or activity in a given field; minimum education, experience or achievement, recommendations by colleagues or current members; or payment of dues do not satisfy this criterion.” The Petitioner correctly notes that he did not claim or provide evidence that his membership on the national team in his sport was based on any of these factors.

Turning to the submitted evidence, we note that while all three letters referenced above indicate that the Petitioner qualified for the [] National [] Team as a result of winning national championships, the record contains no independent evidence of the Petitioner’s competition results in any [] national championship or any other national event. If he became a member of the national team based solely on this achievement, it is reasonable to expect that he provide documentary evidence demonstrating that he was in fact the [] national [] champion in each year he was on the team.

Further, the Petitioner relies solely on the above-referenced letters in support of his claim that membership on the team requires an outstanding achievement, i.e., a national championship. Only one of the letters is from a person associated with the sport’s national federation, and none of them are sufficiently specific with respect to the national team membership requirements or selection processes. Notably, the record does not contain corroborating evidence, such as a translated copy of the official rules or selection procedures from the [] Federation of []. Therefore, based on the above, the Petitioner did not submit sufficient evidence to establish that his membership on the national team satisfies all elements of this criterion.

Evidence that the individual has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix)

The Director concluded that the Petitioner met this criterion. For the reasons discussed below, we will withdraw that determination.

The Petitioner provided copies of his pay statements and a copy of his IRS Form W-2, Wage and Tax Statement, which show that that he earned gross pay of \$78,229.43 from [] in 2019. The evidence indicated that these gross earnings included “miscellaneous non-taxable compensation”

of \$27,326.71, identified on his pay statements as “Lodging Allow” and “Market All.” After subtracting these allowances, his wages were \$50,901.72.

The Petitioner’s contract of employment with [REDACTED] for the [REDACTED] show indicates that he was to be paid a weekly salary for rehearsals in early 2019, and \$140 per performance of the show between April and December 2019. The “show” compensation of \$140 is listed on the Petitioner’s pay statement as an hourly rate and his assertion that his salary is high is based, in part, on a claimed hourly wage of \$140. However, this rate is inconsistent with the terms of his contract, which lists this rate as his “per performance” remuneration. Moreover, we note that the provided employment contract indicates that the Petitioner is expected to spend time participating in several activities ancillary to performances for which no additional remuneration is provided, such as costume and make up sessions and 18 hours of rehearsals per week. Although the Petitioner maintains on appeal that his hourly pay is “\$190” none of the supporting evidence indicates that he earns this hourly wage. Moreover, based on the terms of the Petitioner’s contract, the evidence does not establish that his hourly pay is \$140.

The Petitioner provided comparative wage data from several sources in support of his claim that he has commanded a high salary in relation to others in the field. Data from the U.S. Bureau of Labor Statistics (BLS) shows that “Entertainers and Performers, Sports and Related Workers, All Other” earn a mean hourly wage of \$21.53, with the top ten percent earning at least \$42.47 per hour. However, for the reasons discussed above, the evidence provided does not clearly identify the Petitioner’s hourly wage or the number of hours he works per week while on tour with [REDACTED]

Information the Petitioner obtained from *Payscale* indicates that the average circus performer earns an annual salary of \$39,548, with the top 10% of earners receiving \$70,000 or more annually in salary and “total pay” as high as \$87,000. The Petitioner’s 2019 earnings (\$50,901 after deducting lodging and “market” allowances) is above the average listed here, but well below the highest earners. We also note that this data is based on information obtained from only 14 individuals and may not reliably represent industry salaries.

The third and final source the Petitioner provided is an article titled “Becoming a Circus Performer” published by the website *KidzWorld* in [REDACTED] 2017. The article features an interview with a [REDACTED] acrobat and dancer who indicates that she is required to work “a lot of long hours and weekends.” The article states that “featured performers like acrobats, contortionists or trapeze artists can make between \$40,000 and \$70,000 a year” along with free room and board while traveling with a show but it does not cite a source for these figures. Further, as noted, the Petitioner’s salary, after deducting the lodging and other allowances that appear to be standard in this field, was \$50,901 and not on the higher end of the stated wage for a “featured performer.”

For these reasons, we conclude that the Petitioner has not established that he meets the high salary criterion at 8 C.F.R. § 204.5(h)(3)(ix).

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we

have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.